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Preparatory Commission for the International Criminal Court

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Statement by the Preparatory Commission dated 3 July 2002, transmitted by the Chairman of the Preparatory Commission to the President of the Security Council with copies to the members of the Security Council and to the Secretary-General

1. The Preparatory Commission for the International Criminal Court, mindful of the Charter of the United Nations and in particular its provisions relating to the powers and functions of the Security Council, is deeply concerned about the current developments in the Security Council regarding the International Criminal Court and international peacekeeping.

2. The Preparatory Commission calls upon all States to safeguard the independent and effective functioning of the International Criminal Court that is complementary to national jurisdictions.

3. The Preparatory Commission appeals to the member States of the Security Council to ensure an outcome of those developments which fully respects the letter and spirit of the Rome Statute of the International Criminal Court.

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Preparatory Commission for the International Criminal Court

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Proceedings of the Preparatory Commission at its tenth session (1-12 July 2002)

Draft summary

Rapporteur: Mr. Salah **Suheimat** (Jordan)

1. The Preparatory Commission for the International Criminal Court, established in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, met at United Nations Headquarters from 1 to 12 July 2002, in accordance with General Assembly resolution 56/85 of 12 December 2001.

2. In accordance with paragraph 2 of resolution F of the Conference, the Preparatory Commission consists of representatives of States which signed the Final Act of the Conference and other States which were invited to participate in the Conference.

3. Under paragraph 4 of General Assembly resolution 56/85, the Secretary-General was requested to reconvene the Preparatory Commission, in accordance with resolution F of the Conference, from 8 to 19 April and from 1 to 12 July 2002, so as to continue to carry out the mandate of that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

4. In accordance with paragraph 6 of General Assembly resolution 56/85, the Secretary-General invited, as observers to the Preparatory Commission, representatives of organizations and other entities that have received a standing invitation from the General Assembly, pursuant to its relevant resolutions, to participate in the capacity of observers in its sessions and work, and also invited as observers to the Commission representatives of interested regional intergovernmental organizations and other interested international bodies, including the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda.

5. Under paragraph 7 of the same resolution, non-governmental organizations may participate in the work of the Preparatory Commission by attending its plenary and its other open meetings, in accordance with the rules of procedure of the

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Commission, receiving copies of the official documents and making available their materials to delegates.

6. The Bureau of the Preparatory Commission, which was elected at the 1st and 2nd meetings of the Commission, on 16 and 22 February 1999, and at the 34th and 37th plenary meetings, on 8 and 19 April 2002, continued its work at the tenth session, with the following composition:

Chairman:
Philippe Kirsch (Canada)

Vice-Chairmen:
Enver Daniels (South Africa)
George Winston McKenzie (Trinidad and Tobago)
Mirza Kusljugic (Bosnia and Herzegovina)

Rapporteur:
Salah Suheimat (Jordan)

7. The Director of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat, Václav Mikulka, acted as Secretary of the Preparatory Commission. The Codification Division provided the substantive servicing for the Commission.

8. The Preparatory Commission held its tenth and last session from 1 to 12 July 2002.

9. In accordance with the decision taken at its 37th meeting, on 19 April 2002, the Preparatory Commission agreed on a work plan for its tenth session, which divided up the time of the Preparatory Commission between the following remaining five working groups on: the Assembly of States Parties — Preparatory Documents; a Draft Budget for the First Financial Period of the Court; the Remuneration of Judges, the Prosecutor and the Registrar; the Victims Trust Fund; and on the Crime of Aggression.

10. The list of coordinators at the current session is as follows:

(a) Saeid Mirzaee-Yengejeh (Islamic Republic of Iran), Coordinator for the Assembly of States Parties — Preparatory Documents;

(b) Valentin Zellweger (Switzerland), Coordinator for a Draft Budget for the First Financial Period of the Court;

(c) Gaile Ramoutar (Trinidad and Tobago), Coordinator for the Victims Trust Fund;

(d) John Holmes (Canada), Coordinator for the remuneration of judges, the Prosecutor and the Registrar;

(e) Silvia Fernández de Gurmendi (Argentina), Coordinator for the Crime of Aggression.

11. At its 38th meeting, on 1 July 2002, the Preparatory Commission took note of the oral report of Silvia Fernández de Gurmendi (Argentina), Chair of the Bureau's subcommittee acting as an interlocutory with the host country, on the progress made by the advance team of experts working to ensure the early and effective establishment of the Court.

12. At its 40th meeting, on 3 July 2002, the Preparatory Commission agreed that the following statement should be transmitted by the Chairman of the Preparatory Commission to the President of the Security Council, the Member States of the Council and the Secretary-General.[1] The statement read as follows:

> "1. The Preparatory Commission for the International Criminal Court, mindful of the Charter of the United Nations and in particular its provisions relating to the powers and functions of the Security Council, is deeply concerned about the current developments in the Security Council regarding the International Criminal Court and international peacekeeping.
>
> "2. The Preparatory Commission calls upon all States to safeguard the independent and effective functioning of the International Criminal Court that is complementary to national jurisdictions.
>
> "3. The Preparatory Commission appeals to the Member States of the Security Council to ensure an outcome of those developments which fully respects the letter and spirit of the Rome Statute of the International Criminal Court."

13. At its 41st meeting, on 8 July 2002, the Chairman of the Preparatory Commission noted that there remained a few outstanding technical issues relating to the Draft Agreement on the Privileges and Immunities of the Court and appointed Irene Gartner (Austria) as focal point for consultations on the outstanding issues. The Chairman also noted that in the context of the work of the Working Group on a Draft Budget for the First Financial Period of the Court, reference had been made to the creation of a position of a Director of Common Services to be appointed by the Assembly of States Parties, and decided to appoint Patricio Ruedas (Spain) as focal point on the matter. The Chairman further appointed Hans Bevers (Netherlands) as focal point on issues related to the International Criminal Bar.

14. At the same meeting, the Preparatory Commission decided to hold the first meeting of the Assembly of States Parties from 3 to 10 September 2002.

15. At its 42nd meeting, on 12 July 2002, the Preparatory Commission took note of the oral reports of the coordinators of the working groups on: the Assembly of States Parties — Preparatory Documents; a Draft Budget for the First Financial Period of the Court; the Victims Trust Fund; the Remuneration of Judges, the Prosecutor and the Registrar; and the Crime of Aggression.

16. At the same meeting, the Preparatory Commission adopted the report on the work of its tenth session (PCNICC/2002/...).

17. The Preparatory Commission thus completed its mandate in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998 and General Assembly resolution 56/85 of 12 December 2001.

18. The Preparatory Commission noted with satisfaction that, during its tenth session, a total of 24 delegates had made use of the trust fund which, pursuant to paragraph 8 of General Assembly resolution 53/105 of 8 December 1998, had been established to facilitate the participation of the least developed countries in the work of the Commission. Those delegates had been provided with airline tickets and daily subsistence allowance.

19. The list of documents relating to the items considered at the tenth session is annexed to the present document.

Notes

[1] The statement was also issued as a document of the Preparatory Commission, under the symbol PCNICC/2002/L.3.

United Nations PCNICC/2002/L.5

Preparatory Commission for the International Criminal Court

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Draft report of the Preparatory Commission for the International Criminal Court

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Introduction

1. The Preparatory Commission for the International Criminal Court, established in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, continued to carry out its mandate, in accordance with resolution F of the Conference and General Assembly resolution 56/85 of 12 December 2001, to discuss ways to enhance the effectiveness and acceptance of the Court.

2. In accordance with General Assembly resolution 56/85, the Preparatory Commission met at United Nations Headquarters for its tenth session from 1 to 12 July 2002.

3. The Bureau, as elected by the Preparatory Commission at its 1st and 2nd meetings, on 16 and 22 February 1999, and at its 34th and 37th meetings, on 8 and 19 April 2002, continued to act as the Bureau of the Commission at its tenth session.

4. At its fifth session, from 12 to 30 June 2000, the Preparatory Commission had adopted a report on the work of the Commission at its first to fifth sessions,[1] to which was annexed the finalized draft texts of the Rules of Procedure and Evidence (PCNICC/2000/1/Add.1) and of the Elements of Crimes (PCNICC/2000/1/Add.2).

5. At its eighth session, at the 33rd meeting, on 5 October 2001, the Preparatory Commission had adopted a report on the work of the Commission at its sixth, seventh and eighth sessions containing, in accordance with paragraph 5 of resolution F of the Conference, the draft texts of the Relationship Agreement between the Court and the United Nations, the Financial Regulations, the Agreement on the Privileges and Immunities of the Court, and the Rules of Procedure of the Assembly of States Parties.[2] That report also contained as annexes two draft resolutions of the Assembly of States Parties, one on the establishment of the Committee on Budget and Finance, and the other on relevant criteria for voluntary contributions to the International Criminal Court.

6. At its ninth session, at the 37th meeting, on 19 April 2002, the Preparatory Commission had adopted a report on the work of the Commission at its ninth session, containing also in accordance with paragraph 5 of resolution F of the Conference, the draft texts of the Basic Principles Governing a Headquarters Agreement and the Financial Rules.[3] That report also contained two draft resolutions of the Assembly of States Parties, one on the Secretariat of the Assembly of States Parties, and the other on crediting contributions to the United Nations Trust Fund to support the Establishment of the International Criminal Court.

7. At its tenth session, at the 42nd meeting, on 12 July 2002, the Preparatory Commission recalled that at its 36th meeting, on 15 April 2002, it had taken note of the proceedings of an intersessional meeting of experts held at The Hague in 2002 and that it had recommended that the report[4] of the intersessional meeting should be transmitted to the Assembly of States Parties for onward transmission to the International Criminal Court,[5] and decided to annex it to the present report (see annex __).

8. At the same meeting, the Preparatory Commission adopted the report on the work of its tenth session (PCNICC/2002/...), containing:

- The budget for the first financial period of the Court;

- Texts of (a) the draft resolution of the Assembly of States Parties relating to scales of assessments for the apportionment of the expenses of the International Criminal Court; (b) the draft resolution of the Assembly of States Parties relating to the Working Capital Fund for the first financial period; (c) the draft decision of the Assembly of States Parties relating to the provision of funds for the Court; (d) the draft decision of the Assembly of States Parties relating to the participation of the International Criminal Court in the United Nations Joint Staff Pension Fund; (e) the draft resolution of the Assembly of States Parties relating to budget appropriations for the first financial period and financing of appropriations for the first financial period; (f) the draft decision of the Assembly of States Parties concerning interim arrangements for the exercise of authority pending the assumption of office by the Registrar; (g) the draft resolution of the Assembly of States Parties concerning selection of the staff of the International Criminal Court. These documents were adopted by the Working Group on a Draft Budget for the First Financial Period of the Court;

- Texts of (a) the draft resolution of the Assembly of States Parties on the procedure for the nomination and election of judges, the Prosecutor and the Deputy Prosecutors of the International Criminal Court; (b) the draft resolution regarding the permanent secretariat of the Assembly of States Parties; (c) the draft recommendation of the Assembly of the States Parties concerning seating arrangements for States Parties; (d) the draft resolution of the Assembly of States Parties on the procedure for the nomination and election of members of the Committee on Budget and Finance; (e) the provisional agenda for the first session of the Assembly of States Parties, to be held at United Nations Headquarters from 3 to 10 September 2002. These documents were adopted by the Working Group on the Assembly of States Parties — Preparatory Documents;

- Texts of (a) the draft resolution of the Assembly of States Parties on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims; and (b) the draft resolution of the Assembly of States Parties on the procedure for the nominations and election of members of the Board of Directors of the Trust Fund for the benefit of victims. These documents were adopted by the Working Group on Financial Issues — Victims Trust Fund;

- Conditions of service of non-full-time judges of the International Criminal Court (annexed to the draft budget), which were adopted by the Working Group on Financial Issues — Remuneration of Judges, the Prosecutor and the Registrar;

- The text of a draft resolution of the Assembly of States Parties on the continuity of work in respect of the crime of aggression. This document was adopted by the Working Group on the Crime of Aggression.

9. The Preparatory Commission also agreed to include in the present report the discussion paper on the definition and elements of the crime of aggression (PCNICC/2002/WGCA/RT.1/Rev.2) prepared by the Coordinator of the Working Group on the Crime of Aggression, together with a list of all proposals and related

documents issued by the Preparatory Commission as well as the historical review of developments relating to aggression prepared by the Secretariat (PCNICC/2002/WGCA/L.1).

10. The Preparatory Commission agreed to a technical revision of article 33, paragraph 1, and article 35, paragraphs 1, 2 and 4, of the draft agreement on the privileges and immunities of the Court (PCNICC/2001/L.1/Rev.1/Add.3), as follows:

[to be inserted]

11. With regard to the composition of the Bureau at the first meeting of the Assembly of States Parties, the Preparatory Commission took note of the following understanding: [to be inserted]

12. Concerning an international criminal bar, the Preparatory Commission ...

13. To facilitate the tasks of the Preparatory Commission, the Chairman, in consultation, with the Bureau, had designated the following as coordinators of the working groups:

(a) Saeid Mirzaee-Yengejeh (Islamic Republic of Iran), Coordinator for the Working Group on the Assembly of States Parties — Preparatory Documents;

(b) Valentin Zellweger (Switzerland), Coordinator for the Working Group on a Budget for the First Financial Period;

(c) Gaile Ramoutar (Trinidad and Tobago), Coordinator for the Working Group on the Victims Trust Fund;

(d) John Holmes (Canada), Coordinator for the Working Group on the Remuneration of Judges, the Prosecutor and the Registrar;

(e) Silvia Fernández de Gurmendi (Argentina), Coordinator for the Working Group on the Crime of Aggression.

14. In addition, the Chairman also appointed Irene Gartner (Austria) as focal point for consultation on outstanding technical issues relating to the draft agreement on the privileges and immunities of the Court; Patricio Ruedas (Spain) as focal point on the creation of a position of a Director of Common Services to be appointed by the Assembly of States Parties; and Hans Bevers (Netherlands) as focal point on issues related to the International Criminal Bar.

15. Also at its tenth session, at the 41st meeting, on 8 July 2002, the Preparatory Commission decided to hold the first meeting of the Assembly of States Parties from 3 to 10 September 2002.

16. The Preparatory Commission noted with satisfaction that, during its tenth session, a total of 24 delegates had made use of the trust fund which, pursuant to paragraph 8 of General Assembly resolution 53/105 of 8 December 1998, had been established to facilitate the participation of the least developed countries in the work of the Commission. Those delegates had been provided with airlines tickets and daily subsistence allowance.

17. The list of documents relating to the texts referred to in paragraph 8 is contained in annex ___ to the present report.

Notes

[1] PCNICC/2000/1 and Add.1 and 2. The first to fifth sessions of the Preparatory Commission were held from 16 to 26 February, 26 July to 13 August and 29 November to 17 December 1999 and from 13 to 31 March and 12 to 30 June 2000.

[2] PCNICC/2001/1 and Add.1-4. The sixth to eighth sessions of the Preparatory Commission were held from 27 November to 8 December 2000 and from 26 February to 9 March and 24 September to 5 October 2001.

[3] PCNICC/2002/1 and Add.1 and 2. The ninth session of the Preparatory Commission was held from 8 to 19 April 2002.

[4] PCNICC/2002/INF.2.

[5] PCNICC/2002/1, para. 10.